

REMARKS

The Application has been carefully reviewed in light of the Office Action mailed October 21, 2003. In order to advance prosecution of this Application, Claims 11, 12, and 14. Applicant respectfully requests reconsideration and favorable action in this Application.

Claims 11, 12, 14, 22, and 23 stand rejected under 35 U.S.C. §112, first paragraph, as containing subject matter not described in the specification. Support for the language of Claims 11, 12, 14, 22, and 23 can be found at page 6, line 31, to page 7, line 2, and page 7, lines 7-16, of Applicant's specification. The specification clearly states that the diodes radiate a harmonic signal with a third order intermodulation product of $2F_2 - F_1$ or $2F_1 - F_2$. The operation is disclosed at page 8, lines 20-25, of Applicant's specification. An example of a diode that radiates such a harmonic signal is disclosed at page 6, 23-24, of Applicant's specification. The specification describes how the diodes are able to generate such harmonic signals at page 7, lines 30-32, of Applicant's specification. Therefore, Applicant respectfully submits that Claims 11, 12, 14, 22, and 23 are in accordance with 35 U.S.C. §112, first paragraph.

Claim 34 stands rejected under 35 U.S.C. §102(b) as being anticipated by Mawhinney. Independent Claim 34 recites ". . . at least one RF diode carried by an article and responsive to at least two RF signals to generate an harmonic signal having a third order intermodulation product defined by the expression of twice a first one of the two RF signals less a second one of the two RF signals . . ." By contrast, the Mawhinney patent discloses a RF diode that receives two RF signals and generates a signal having a frequency determined by the expression of a first one of the two RF signals less a

second one of the two RF signals. The Examiner has not pointed to any portion of the Mawhinney patent that discloses a capability to generate an harmonic signal having a third order intermodulation product defined by the expression of twice a first one of the two RF signals less a second one of the two RF signals as required by the claimed invention. Thus, the Mawhinney patent cannot anticipate the claimed invention as it generates a different signal having a different product than that provided in the claimed invention. Therefore, Applicant respectfully submits that Claim 34 is not anticipated by the Mawhinney patent.

Claims 5-11, 13, 15-18, 26, and 30 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Mawhinney in view of Nysen. Independent Claims 5, 10, and 18 recite in general the ability to generate an analyzer signal in response to an harmonic signal received by an antenna and to identify an article according to the analyzer signal. By contrast, the Examiner readily admits that the Mawhinney patent lacks a signal analyzer that is responsive to the analyzer signal. To support the deficiency of the Mawhinney patent, the Examiner cites the Nysen patent for its analyzer for reconstructing symbols from a detected modulation pattern. However, the symbols reconstructed by the Nysen patent are merely indicative of a data clock, a reference clock, and the interrogation signal and do not contain information related to identification of an article as required by the claimed invention. See column 9, lines 46-49, of the Nysen patent. The Examiner has yet to cite any language in the Mawhinney or Nysen patents that provide for identification of an article carrying the diodes. Moreover, the Nysen patent is directed to generation of a reply signal from a single interrogation signal and thus is incompatible with the dual interrogation

signal technique shown in the Mawhinney patent and required by the claimed invention. See column 12, lines 61-65, of the Nysen patent. As a result, the proposed combination of the Mawhinney patent and the Nysen patent would not be able to identify an article according to an analyzer signal as provided in the claimed invention. Therefore, Applicant respectfully submits that Claims 5-11, 13, 15-18, 26, and 30 are patentably distinct from the proposed Mawhinney - Nysen combination.

Claims 19-21, 24, 25, 28, 29, and 31-33 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Mawhinney in view of Nysen and further in view of Dames, et al. Independent Claim 18, from which Claims 19-21 depend, has been shown above to be patentably distinct from the proposed Mawhinney - Nysen combination. Further, Independent Claims 24 and 31 include similar features identified above as being distinguishable from the proposed Mawhinney - Nysen combination. Moreover, the Dames, et al. patent does not include any additional disclosure combinable with either the Mawhinney patent or the Nysen patent that would be material to patentability of these claims. In fact, one skilled in the art would hardly consider the Dames, et al. patent, which is directed to magnetic tags, with the RF frequency tags of the Mawhinney and Nysen patents. The Examiner has yet to cite any language in the Mawhinney, Nysen, or Dames, et al. patents that provide for identification of an article carrying the diodes. The proposed combination of the Mawhinney, Nysen, and Dames, et al. patents would still not be capable of identifying an article according to an analyzer signal as provided in the claimed invention. Therefore, Applicant respectfully submits that Claims 19-21, 24, 25, 28, 29, and

31-33 are patentably distinct from the proposed Mawhinney - Nysen - Dames, et al. combination.

Claim 27 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Mawhinney in view of Nysen and Dames, et al. and further in view of Shimamura, et al. Independent Claim 24, from which Claim 27 depends, has been shown above to be patentably distinct from the proposed Mawhinney - Nysen - Dames, et al. - combination. Moreover, the Shimamura, et al. patent does not include any additional disclosure combinable with any of the Mawhinney, Nysen, and/or Dames, et al. patents that would be material to patentability of these claims. Therefore, Applicant respectfully submits that Claim 27 is patentably distinct from the proposed Mawhinney - Nysen - Dames, et al. - Shimamura, et al. combination.

Applicant notes with appreciation the allowability of Claims 22 and 23 if amended to overcome the rejection under 35 U.S.C. §112, first paragraph. Claims 22 and 23 have been shown above to be in accordance with 35 U.S.C. §112, first paragraph. Therefore, Applicant respectfully submits that Claims 22 and 23 are in condition for allowance.

Applicant notes with appreciation the allowability of Claims 11, 12, and 14 if amended to overcome the rejection under 35 U.S.C. §112, first paragraph, and placed into appropriate independent form. Claims 11, 12, and 14 have been amended into independent form and shown above to be in accordance with 35 U.S.C. §112, first paragraph. Therefore, Applicant respectfully submits that Claims 11, 12, and 14 are in condition for allowance.

With the presentation of two extra independent claims, an additional filing fee is due. Please charge Deposit Account No. 02-0378 of BAKER BOTTS L.L.P. in an amount of \$172.00 to

satisfy the excess independent claims fee of 37 C.F.R. §1.16(b).

The present Response to examiner's Final Action is necessary to address the Examiner's characterization of the prior art and interpretation of the claims. This Response to Examiner's Final Action could not have been presented earlier as the Examiner has only now provided the instant characterization of the prior art and interpretation of the claims.

CONCLUSION

For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request reconsideration and allowance of all pending claims.

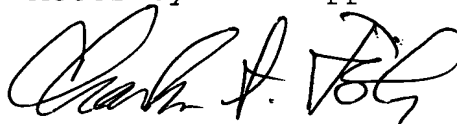
If the Examiner believes that a telephone conference would advance prosecution of this Application, the Examiner is invited to contact the undersigned attorney at the Examiner's convenience.

The Commissioner is hereby authorized to charge any fee and credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

BAKER BOTTS L.L.P.

Attorneys for Applicants



Charles S. Fish

Reg. No. 35,870

July 6, 2004

Correspondence Address:

BAKER BOTTS L.L.P.

2001 Ross Avenue, Suite 600

Dallas, TX 75201-2980

214.953.6507

Customer Number: 05073